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09/785,700	02/16/2001	Robert M. Szabo	6169-156	4280

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AKERMAN SENTERFITT  
P. O. BOX 3188  
WEST PALM BEACH, FL 33402-3188

EXAMINER
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LASTRA, DANIEL

ART UNIT	PAPER NUMBER
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3622

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09/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/785,700

Applicant(s)

SZABO ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-13 and 16-24 have been examined. Application 09/785,700 (METHOD AND APPARATUS FOR STIMULATING COMMERCE) has a filing date 02/16/01.

#### ***Response to Amendment***

2. In response to Non Final Rejection filed 03/21/2007, the Applicant filed an Amendment on 06/21/2007, which amended claims 1, 4, 10, 16, 19.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-6, 7-13, 16, 18-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Barenbaum (US 2001/0039514).

As per claims 1, Barenbaum teaches:

A computer-implemented method of providing promotional material to consumers comprising:

generating in a merchant computer system a merchant request to stimulate commerce for merchant-specified products (see paragraph 21);

establishing a computer communications session between the merchant computer system and a third-party remote shopping stimulation system wherein the merchant request is conveyed to the third party shopping stimulation system (see paragraphs 29; 48) ;

reading with said third-party remote shopping simulation system consumer purchase information from a plurality of merchant computer systems, said consumer purchase information comprising consumer identifying information and product information (see paragraph 48);

based at least in part on said consumer purchase information, identifying one or more potential consumers who have previously purchased one or more of the merchant-specified products (see paragraphs 21, 48 and 50);

determining that at least one of the merchant-specified products is an obsolete product when a new or alternate version of the at least one of the merchant-specified products *has at least one among current availability and expected availability* within a predetermined time period, and *ascertaining which of said identified potential consumers previously purchased at least one of said obsolete products* (see paragraphs 18, 19 “end of summer season with an abundant of summer dresses and sandals”);

in said third-party remote shopping stimulation system, generating promotional material *for said new or alternate version of the at least one of the merchant-specified products* of the one or more potential customers *ascertained* as having previously purchased the at least one *of said* merchant-specified product identified as an obsolete

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product, and associating said promotional material corresponding to said *new or alternate version of the* at least one of the merchant-specified products with said *ascertained* consumers (see paragraphs 18, 19, 21 and 35) and

making said promotional material available to said identified consumers using a promotional material delivery system (see paragraph 21).

As per claim 3, Barenbaum teaches:

The method of claim 1, wherein said promotional material and said consumer purchase information include person-to-person transactions and Internet-based transactions (see paragraphs 23 and 41).

As per claim 4, Barenbaum teaches:

The method of claim 1, wherein each said step is performed responsive to the merchant system detecting a business necessity corresponding to said *new or alternate versions of said* product identified as an obsolete product, wherein said business necessity corresponds to a merchant of said *new or alternate versions of said* product identified as an obsolete product having excess inventory of said *new or alternate versions of said* product identified as an obsolete product (see paragraphs 18-19 and 21).

As per claim 5, Barenbaum teaches:

The method of claim 1, wherein said consumer purchase information is read from a purchase history database comprising consumer purchase information for a plurality of different merchants, and wherein the third-party remote shopping stimulation system

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responds to merchant requests from said plurality of different merchants (see paragraphs 47-48).

As per claim 6, Barenbaum teaches:

The method of claim 1, wherein the one or more merchant-specified products comprise a service (see paragraph 18).

As per claims 7 and 22, Barenbaum teaches:

The method of claim 1, said product information comprising product expiration information and product identifying information wherein said step of identifying one or more potential consumers of products is additionally based upon the expiration information of products (see paragraph 19 “events have a start and end date”).

As per claim 8, Barenbaum teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in electronic format (see paragraph 21).

As per claim 9, Barenbaum teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in printed format (see paragraph 5).

As per claim 10, Barenbaum teaches:

A system for providing promotional material to consumers comprising: a merchant computer system configured to generate a merchant request to stimulate commerce for one or more merchant-specified products;

a merchant inventory management system configured to track shipments received by one or more merchants of the one or more merchant-specified products (see paragraphs 18 and 50);

a shopping stimulation logic unit in communication with said merchant inventory management system for determining that at least one merchant-specified product is an obsolete product when a new or alternate version of the at least one merchant-specified product *has at least one among current availability and expected availability* within a predetermined time period, and identifying that at least one merchant-specified product as an obsolete product (see paragraphs 18, 19, 21 and 50);

a promotional information database, accessible by said shopping stimulation logic unit, and comprising consumer identifying information identifying one or more potential consumers who have previously purchased the at least one merchant-specified product identified as an obsolete product (see paragraphs 21, 35) and

a promotional material delivery system configured to generate promotional material for the one or more potential customers identified as having previously purchased the at least one merchant-specified product identified as an obsolete product and to make said promotional material available to said identified consumers (see paragraphs 21 and 35).

As per claim 16, Barenbaum teaches:

A computer-implemented method of providing promotional material to consumers comprising:

establishing a computer communications session between a merchant computer system and a third-party remote shopping stimulation system (see paragraphs 30-31);

reading with said third-party remote shopping stimulation system consumer purchase information from a plurality of merchant computer systems, said consumer purchase information comprising consumer identifying information and product information corresponding to merchant-specified products (see paragraphs 21 and 35);

determining the at least one of the merchant-specified products is an obsolete product when *said at least one of said merchant specified products has at least one among a new or alternate version having current availability, a new or alternate version having expected availability within a predetermined time period, and a new or alternate version replacing said at least one of the merchant-specified products reaching an end of a product life cycle*, and identifying at least one of the merchant-specified products as an obsolete product (see paragraph 18 and 19);

in response to determining that at least of the merchant-specified products is an obsolete product, identifying one or more potential consumers *who previously purchased the* obsolete products based at least in part on said consumer purchase information (see paragraphs 18, 19, 21 and 35);

in said third-party remote shopping stimulation system, generating promotional material *for said new or alternative version of* the identified obsolete product and



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associating said promotional material corresponding to *new or alternative version of said* identified obsolete product with said identified consumers (see paragraph 21); and making said promotional material available to said identified consumers using a promotional material delivery system (see paragraph 21).

As per claim 11, Barenbaum teaches:

The system of claim 10, further comprising:

a consumer purchase information data structure for storing consumer identifying information and product information corresponding to a purchase transaction (see paragraph 35).

As per claim 12, Barenbaum teaches:

The system of claim 10, further comprising:

a commerce system for collecting said consumer purchase information in a computer communications network environment (see paragraph 35).

As per claims 13 and 18, Barenbaum teaches:

The method of claim 10, wherein said promotional material and said consumer purchase information include person-to-person transactions and Internet-based transactions (see paragraphs 23 and 41).

As per claim 19 Barenbaum teaches:

The method of claim 16, wherein each said step is performed responsive to the merchant system detecting a business necessity corresponding to *said new or alternate version of said* product identified as an obsolete product, wherein said business necessity, corresponds to a merchant of *said new or alternate versions of said* product

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identified as an obsolete product having excess inventory of *said new or alternate versions of said* product identified as an obsolete product (see paragraphs 18-19 and 21).

As per claim 20, Barenbaum teaches:

The method of claim 16, wherein said consumer purchase information is read from a purchase history database comprising consumer purchase information for a plurality of different merchants, and wherein the third-party remote shopping stimulation system responds to merchant requests from said plurality of different merchants (see paragraphs 47-48).

As per claim 21, Barenbaum teaches:

The method of claim 16, wherein the merchant-specified products comprise a service (see paragraph 18).

As per claim 23, Barenbaum teaches:

The method of claim 16, wherein said promotional material made available to said identified consumers is in electronic format (see paragraph 21).

As per claim 24, Barenbaum teaches:

The method of claim 16, wherein said promotional material made available to said identified consumers is in printed format (see paragraph 5).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barenbaum (US 2001/0039514) in view of Deaton (US 6,611,811).

As per claim 2, Barenbaum fails to teach:

The method of claim 1, said identifying step further comprising determining a product consumption rate from said consumer purchase information to identify said one or more potential consumers of the least one merchant-specified product. However, Deaton teaches "A consumption rate analysis is performed based on historical product purchases. Non-perishable products that may typically be consumed over a period of more than one week are analyzed to determine the rate in which they are consumed for each ID. This consumption rate is compared with the date of last purchased so that a prediction of next purchase may be made" (see Deaton column 70, lines 4-25; column 90; column 118, lines 52-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Barenbaum would make a consumption rate analysis for perishable products, which typically need to be consumed in less than one week, such as milk, as taught by Deaton in order to target incentives to customers based upon a match between said perishable product due date and a merchant over-stocked or low revenue products. This feature would allow the Barenbaum system improve the capacity management of time sensitive products or services and therefore, offset over capacity or low revenues.

As per claim 17, Barenbaum fails to teach:

The method of claim 16, said identifying step further comprising determining a product consumption rate from said consumer purchase information to identify said one or more potential consumers of each of the merchant-specified products. However, Deaton teaches "A consumption rate analysis is performed based on historical product purchases. Non-perishable products that may typically be consumed over a period of more than one week are analyzed to determine the rate in which they are consumed for each ID. This consumption rate is compared with the date of last purchased so that a prediction of next purchase may be made" (see Deaton column 70, lines 4-25; column 90; column 118, lines 52-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Barenbaum would make a consumption rate analysis for perishable products, which typically need to be consumed in less than one week, such as milk, and would transmit incentives to customers for such perishable products, when the product expiration is due, as taught by Deaton and when Barenbaum system notice a over-stocked or low revenue for said perishable products. This feature would allow the Barenbaum system to track perishable and non-perishable products and send corresponding incentives when the next due date to purchase a type of product arrives.

### ***Response to Arguments***

5. Applicant's arguments filed 06/21/2007 have been fully considered but they are not persuasive. The Applicant argues that Barenbaum does not teach identifying users based on products purchased that are obsolete. The Examiner answers that

Barenbaum identifies potential users which would receive target promotions based upon said users previous purchases (see paragraph 35) and redemption history of said promotions (see paragraph 39), where said promotions are related to products which have natural expirations periods (*i.e.* obsolete) (see paragraphs 22 and 35). Therefore, contrary to Applicant's argument, Barenbaum identifies users to target promotions from said users previous purchases of previously expired products (*i.e.* obsolete products) and based upon said identifying, Barenbaum target promotions to said potential users.

The Applicant argues that Barenbaum fails to teach the limitation that promotional materials are associated with a consumer based on their previous purchase of a now obsolete product, whether the inventory of the merchant shows an excess capacity or not. The Examiner answers that the Applicant is arguing about limitation not stated in the claims. Nowhere, in Applicant claims is recited the limitation of "whether the inventory of the merchant shows an excess capacity or not".

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra  
September 1, 2007

  
RETTA YEHDEGA  
PRIMARY EXAMINER